INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	4
Conclusion	5

Statute:

Act of March 3, 1925, 43 Stat. 1108, as amended, 2 U.S.C. 159	2

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 276

JOHN P. STORY, JR., TRADING AS STORY & CO., PETITIONER

v.

JOHN W. SNYDER, LUTHER H. EVANS, C. WAYLAND BROOKS, AGNES E. MEYER, ADOLPH MILLER, AS TRUSTEES OF THE LIBRARY OF CONGRESS TRUST FUND BOARD

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The district court did not write an opinion. The opinions of the court of appeals (R. 11-26) are not yet officially reported.

JURISDICTION

The judgment of the court of appeals sought to be reviewed was entered on June 12, 1950 (R. 27).

The petition for a writ of certiorari was filed on August 29, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254(1).

QUESTION PRESENTED

Whether an action for a brokerage commission upon sale of real estate is embraced within a statute vesting the trial court with jurisdiction of suits "for the purpose of enforcing the provisions of any trust accepted by" the Trustees of the Library of Congress Trust Fund Board.

STATUTE INVOLVED

Section 3 of the Act of March 3, 1925, 43 Stat. 1108, as amended, 2 U. S. C. 159, provides:

> The board [Library of Congress Trust Fund Board] shall have perpetual succession, with all the usual powers and obligations of a trustee, including the power to sell, except as herein limited, in respect of all property, moneys, or securities which shall be conveyed, transferred, assigned, bequeathed, delivered, or paid over to it for the purposes above specified. The board may be sued in the district court of the United States for the District of Columbia, which is given jurisdiction of such suits, for the purpose of enforcing the provisions of any trust accepted by it.

STATEMENT

On November 19, 1948, this action was instituted by petitioner in the United States District Court for the District of Columbia by filing a complaint naming as parties defendant the Trustees of the

Library of Congress Trust Fund Board (R. 4). The complaint, which was one for moneys due under express and implied contract, sought judgment against the respondents for the sum of $19,000 allegedly due as a real estate commission in connection with the sale by the Library of Congress Trust Fund Board of property located at Sixteenth and Eye Streets in northwest Washington, D. C. (R. 6).

On January 13, 1949, the respondents filed a motion to dismiss because the district court lacked jurisdiction of the subject matter of the action for the reason that the respondents are an agency of the United States of America, which has not consented to be sued or waived its immunity from suit (R. 7). The district court sustained the motion and its judgment dismissing the complaint was entered on February 21, 1949 (R. 8). The court of appeals affirmed the judgment, one judge dissenting (R. 27).

The majority opinion concluded that jurisdiction could not, as petitioners argued, be rested upon the 1925 Act because the consent to suit did not embrace actions by third party creditors of the Board to enforce liabilities incurred in administration of the trust. Judge Miller dissented primarily on the ground that this was not, as petitioner had conceded, a suit against the United States (R. 21-24). He also expressed the view that the present claim was embraced within the 1925 Act because of the terms of the trust agreement by

which the property was originally transferred to the Board, even though the agreement was not relied upon by petitioner.

ARGUMENT

The sole question here is the construction of a particular statute giving the United States District Court for the District of Columbia jurisdiction over a limited type of suits against the Library of Congress Trust Fund Board. The particular statutory language appears in but one other statute relating to the National Park Trust Fund Board. The point at issue, which has arisen in no other case, is therefore of limited applicability.

Petitioner does not challenge the ruling of the court below, that, as petitioner there conceded, this action constitutes an attempt to sue the United States. Petitioner seeks to present the question whether the Board is obligated to pay real estate commissions. No such issue is here involved.[1]

Little can be added to the thorough discussion by the majority opinion below pointing out that the consent to be sued extends only to suits to enforce provisions of trusts while this suit involves an alleged debt arising from the administration of a trust. Petitioner does not directly attack any of the reasoning of that opinion. While

[1] For this reason, other acts referred to by petitioner (p. 6) authorizing the Secretary of the Interior or the Commissioners of the District of Columbia to sell real estate are irrelevant here.

support is apparently sought from the dissenting opinion (Pet. 5 footnote), petitioner does not urge the theory upon which the dissenting judge sought to embrace this claim within the 1925 Act, i.e., that petitioner was a beneficiary of the trust agreement. Thus, petitioner suggests neither authority nor legal theory which would justify expansion of the 1925 Act beyond its express terms. As pointed out by the majority opinion below such expansion would do violence to settled principles relating to the construction of such statutes (R. 13-14) and would likewise run counter to established trust law (R. 15-16).

CONCLUSION

The decision of the courts below is clearly correct, and the case does not warrant review by this Court. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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SEPTEMBER 1950.

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